

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN KEN TOOLE**, on January 18, 2005 at
3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Ken Toole, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Essmann (R)
Sen. Dan Harrington (D)
Sen. Dave Lewis (R)
Sen. Greg Lind (D)
Sen. Dan McGee (R)
Sen. Gary L. Perry (R)
Sen. Glenn Roush (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: Casey Barrs, Legislative Branch
Claudia Johnson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 193, 1/18/2005
Executive Action: None.

HEARING ON SB 193**Opening Statement by Sponsor:**

SEN. KEITH BALES (R), SD 20, opened the hearing on **SB 193**, Revise electrical generation tax reduction provision of coal severance tax law.

He said this bill amends current language that is already in statute. SB 193 affects the coal severance tax. He said the new language removes the sunset of January 1, 2008, for any facility built after December 31, 2001, and the other part requires the companies to set the rate per the Public Service Commission (PSC) to sell electricity. The electric companies have to offer half of their electricity within the state of Montana, but it would have to be at a comparable price. He stated it is up to the Department of Revenue to make sure that this happens. He didn't know where the issue will end due to Montana still having withdrawals from deregulation. He said that several Montana electrical cooperatives are currently discussing the building of several new electrical generation facilities. These cooperatives are not regulated by the PSC. In order for the cooperatives to be under the PSC, the PSC will have to authorize and set the rate of electricity, which he felt isn't the best way to handle this. One of the plants being proposed will be located near Great Falls. In order to use coal to generate electricity in this area, the coal will have to be shipped in by truck and/or rail. He stated that this bill brings the tax on the power plants into compliance with the coal severance tax. The fiscal note shows no impact. If passed, this bill will take effect on October 1, 2005. He advised that the Department of Revenue will testify as information only, but they do have concerns with the bill.

Proponents' Testimony:

Bud Clinch, Executive Director for the Montana Coal Council (MCC), stated that MCC represents the five operating coal plants in Montana. He stated that these coal plants produce approximately 13 million tons of coal annually, and produce over 1,000 high-paying jobs. He said the coal plants have "many millions" in payroll, and \$30 million in coal severance taxes annually. The coal industry provides substantial economic status in the state of Montana. Each of the existing five coal mines currently have excess production that cannot be captured due to markets. He said SB 193 offers incentives to bring new markets on board, which may decrease production in Montana's coal mines. He stated that the MCC is in favor of amendments that would bring balance and positive economic opportunity for Montana. He stated

the MCC supports this bill and asked the Committee for a do pass motion.

Willie Duffield, Executive Director of Montana Association of Oil and Gas Counties, stated they are in support of SB 193. He said there is potential of development of gas and oil tax. He stated that the association does have a concern regarding the need for a date when the sunset comes off, e.g., the year 2020. He urged the Committee for a do pass.

Opponents' Testimony:

Don Judge, Representing Teamsters Local 190, stated that the Local has employees located in most of eastern Montana who rise in opposition of SB 193. He stated the Local is opposed to the concept of the coal tax reduction for the purpose of providing an incentive to the development of new coal industry. He said this bill penalizes current coal operations who would end up on an unequal tax system that would make it easier for companies to justify shutting down current facilities that are getting older such as, Coal Strips I and II. He explained tax-deferred energy production for new facilities where the coal tax will only be as high as three to four percent versus the 15 percent that is being charged for the coal. He added that the language of the bill extends the threat by indefinitely removing the sunset provision for the bill. He stated the Local is not happy with the potential impact of reducing the value calculation on local governments, the state, and the public school systems. He talked about the removal of language on page 2, line 1, of SB 193, which states "The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule". He stated this would further reduce the value of the tax from what SB 193 initially intended. He said the Local's chief concern is if the reduction is allowed to fully go into effect, the Local expects that the current coal companies that are mining coal in Montana will file a repeal lawsuit until the Interstate Commerce Commission rules that their coal tax be reduced, because the Interstate Commerce regulations state that "these people cannot be taxed differently". **Mr. Judge** said that if this happens the impact on the coal severance tax in the state of Montana will drop from 15 percent to three percent, and those people involved in state budget revenue situations, and the funding for local governments, such as schools, will drop proportionally out of "arms reach". He asked the Committee that the way current law is now to not take the sunset out. He urged the Committee to "kill this bill!"

Patrick Judge, MEIC, distributed a handout (see Exhibit 1) on the widespread energy manipulation in the 2000 Energy Crisis in

California. The report states that the Federal Energy Regulatory Commission (FERC) found six US energy companies that took advantage of California's 2000-2001 energy crisis to price-gouge and receive unfair profits. **Mr. Judge** informed the Committee that this bill will have the same effect if allowed to go through. He informed the Committee that this bill was originally passed into law in 2001, for temporary severance tax rates. **Mr. Judge** distributed several other handouts that show the electricity price on-peak from Dow Jones Mid-Columbia stock (see Exhibit 2). He discussed Exhibit 3, which shows the supply and demand in Montana between 1999 and 2003, of resources used, such as; petroleum, coal, hydrogen, and their production and consumption. He urged the Committee to not pass this bill.

[EXHIBIT\(ens13a01\)](#)

[EXHIBIT\(ens13a02\)](#)

[EXHIBIT\(ens13a03\)](#)

Informational Testimony:

Dave Ohler, Chief Legal Counsel, Department of Revenue, discussed the sunset provision of this bill. He stated that a two-thirds reduction in the coal severance tax would decrease the possibility that a producer would be unable to take advantage of this reduction. He stated that the Department is concerned about reduction for in-state use of coal. The Department is also concerned about the constitutionality of this law. He said there was a Supreme Court decision in 1994, that Montana's tax was the same for both in-state and out-of-state consumers. He informed the Committee that he has drafted an amendment for the Committee, which provides a fail-safe mechanism for SB 193, or SB 134 from the 2001 Legislature that established the two-thirds reduction in the coal severance tax.

Questions from Committee Members and Responses:

SEN. ESSMANN asked **Mr. Ohler** about interstate commerce law, and if language could be drafted to address the price for in-state and out-of-state prices. **Mr. Ohler** responded stating that this wouldn't be giving the Montana coal producers and consumers the advantage of the two-thirds reduction.

SEN. HARRINGTON asked the sponsor, **SEN. BALES**, if the sunset goes off when construction is done on the new coal plants, or does the sunset continue indefinitely. **SEN. BALES** stated that the sunset should be for a specific period of time, and he stated he would be willing to add a time-line on the sunset.

SEN. LIND asked **SEN. BALES** what facilities would be affected by the sunset. **SEN. BALES** replied that the facilities involved by the sunset are: the new facility near Great Falls, and several others in the eastern part of the state. He stated that the completion date for the new coal plant in Great Falls is estimated to be done by 2008 or 2009. **SEN. LIND** asked about the fiscal note that shows no impact, and wanted to know if that is due to the time frame. **SEN. BALES** responded that by having the mines in the state that Montana will receive some tax, and if there weren't any mines in Montana there wouldn't be any tax.

SEN. LIND asked **SEN. BALES** about the constitution issues. **SEN. BALES** stated that he has spoken with the department, and there are ways this could be addressed. He will get back to the Committee with more information regarding this issue.

SEN. PERRY asked **Bud Clinch** about the discussion that took place during the interim committee. He stated that Tom Judge had brought to the Committee's attention the taxing of existing facilities, and whether there would be any disincentives for existing facilities to continue operating under the lower tax structure. **Mr. Clinch** stated that it was unrealistic. A tax reduction will not provide enough incentive for an existing facility to shut down.

CHAIRMAN TOOLE asked **SEN. BALES** about the time-frame on the sunset. **SEN. BALES** stated there is a two-fold reason; 1) this bill will be an incentive to get electrical generation going in the state; and 2) after the electrical plants have had the rate reduction for a period of 10 years, the sunset will go away, and they will revert back to the 15 percent. He stated it was his feeling that after the plants have had this reduction for a period of 10 years, hopefully during this period of time the plants will have been able to recoup their investment, be better able to handle the tax rate increase, and go forward. **CHAIRMAN TOOLE** asked **SEN. BALES** if he would support the amendment to have the sunset taken off 10 years from now. **SEN. BALES** responded yes.

Closing by Sponsor:

SEN. BALES closed stating that he doesn't see Tom Judge' concern for the tax rate incentive for the new plants. He stated that the current plants/mines will have the opportunity to bid to supply coal to every new generation facility that will be built in the future. He said that coal generation could even be increased in some of the mines in the state. He stated that coal mining jobs in Montana are one of the best paying in the state. He noted the AFL-CIO is not present in the hearing today to

testify against the bill. He felt that this bill will create additional mines. He said the reduction of coal severance tax will not affect the local schools. The coal severance tax goes into the coal tax trust fund. He said that the tax for schools is in a different fund and for that reason, this bill will not affect it. He discussed the language on page 2, sub(3), regarding the formula. He said this language was discussed in the Tax Reform Subcommittee, and the Department did inform the Committee that this language was outdated, and it referred to a formula that was used in a previous bill and wasn't taken out. He said this is a housekeeping issue. **SEN. BALES** stated this bill creates jobs and wealth for the state of Montana. He informed the Committee that he is a farmer, and farmers make a living by exporting their agriculture, and this is a natural resource product. He stated Montana should be exporting electricity out-of-state, and making money. He stated he will work with the Committee and the Department of Revenue to develop some amendments that will help this bill go forward. He urged the Committee to pass this bill.

ADJOURNMENT

Adjournment: 3:35 P.M.

SEN. KEN TOOLE, Chairman

CLAUDIA JOHNSON, Secretary

KT/cj

Additional Exhibits:

EXHIBIT ([ens13aad0.TIF](#))